

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING )  
PHARMACY, INC. PRODUCTS LIABILITY )  
LITIGATION )  
\_\_\_\_\_ )

MDL No. 2419  
Dkt. No 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO: )

Suits Naming the Tennessee Clinic )  
Defendants )  
\_\_\_\_\_ )

**TENNESSEE CLINIC DEFENDANTS' MOTION FOR LEAVE TO FILE SURREPLY TO  
THE PSC'S UNTIMELY AND INCORRECT REPLY REGARDING  
THE MASSACHUSETTS BOARD OF PHARMACY'S  
MOTION FOR PROTECTIVE ORDER**

Defendants Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN; Vaughan Allen, MD; Specialty Surgery Center, Crossville, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; and Donald E. Jones, MD (collectively "Tennessee Clinic Defendants") move for permission to file a three-page surreply to the PSC's untimely and inaccurate reply regarding the Massachusetts Board of Pharmacy's ("Board") Motion for Protective Order.<sup>1</sup>

For their Motion, the Tennessee Clinic Defendants state:

1. On March 18, 2015, the Tennessee Clinic Defendants issued a subpoena for deposition testimony of the Massachusetts Board of Pharmacy pursuant to Fed. R. Civ. P. 30(b)(6) and 45.

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<sup>1</sup> The motion is at Dkt. 1975; the memorandum of law is at Dkt. 1976; the Tennessee Clinic Defendants' opposition is at Dkt. 2029; and the PSC's reply is at Dkt. 2088.

2. On June 16, 2015, the Massachusetts Board of Pharmacy filed a motion for protective order seeking relief from the subpoena, asking the Court to eliminate the Board's obligation to present a single witness until the conclusion of the NECC Insiders' criminal case [Dkts. 1975, 1976].

3. On June 30, 2015, the Tennessee Clinic Defendants filed their opposition to the Board's motion [Dkt. 2029].

4. Without leave of Court or a request from the Court that the PSC "weigh in," and unaccompanied by any motion permitting participation in this dispute, on July 16, 2015, the PSC filed a "reply" to the Tennessee Clinic Defendants' opposition [Dkt. 2088].

5. The PSC's reply conclusively misstates applicable Tennessee law and collaterally attacks the Tennessee Clinic Defendants' comparative fault defenses, in an attempt to influence the Court with a pleading that is both untimely and procedurally improper.

6. Thus, the Tennessee Clinic Defendants hereby move the Court for permission to file a three-page surreply to address the PSC's untimely, incorrect, and inappropriate reply.

7. The proposed surreply is attached as an exhibit to this motion.

Respectfully submitted,

**GIDEON, COOPER & ESSARY, PLC**

/s/ Chris J. Tardio

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***Attorneys for the Tennessee Clinic  
Defendants***

\* Admitted pursuant to MDL Order No. 1.

\*\* Admitted *pro hac vice*.

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 21<sup>st</sup> day of July, 2015.

/s/ Chris J. Tardio

**Chris J. Tardio**